

Neither the rule concerning traded-in property nor the rule concerning trade-in allowances limits the allowance of credit for trade-ins to motor vehicles that are titled in Illinois at the time of the trade-in. Nor do these provisions require that the trade-in vehicle has to have been originally purchased in Illinois and subject to Illinois Retailers' Occupation Tax or Use Tax on the original purchase in order to qualify for the credit. See 86 Ill. Adm. Code 130.425 and 130.455. (This is a GIL.)

November 17, 2005

Dear Xxxxx

This letter is in response to your letter dated October 25, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

This law firm represents ABC and XYZ (collectively, the 'Taxpayers') and hereby requests a response on behalf of the Taxpayers concerning certain Illinois sales and use tax issues as described below.

The question upon which we seek clarification from the Department of Revenue relates to the Illinois trade-in credit available to offset the purchase price of replacement motor vehicles. The issues are whether (1) the trade-in motor vehicle must be titled in Illinois at the time of the trade-in and (2) the trade-in vehicle must have been originally purchased in Illinois and subject to Illinois Retailers Occupation Tax or Use Tax on the original purchase (and therefore whether the Illinois ST-556 filed at the time of purchase must be retained to evidence the tax paid on the original purchase of the trade-in vehicle).

Illinois Compiled Statutes Chapter 35 Sections 105/2 and 120/1 state that for both Retailers' Occupation tax and Use tax purposes, 'selling price' subject to tax is defined as 'the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property, other than as hereinafter provided, and

services, but not including the value of or credit given for traded-in tangible personal property where the item that is traded-in is of like kind and character as that which is being sold, and shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever, ... The phrase 'like kind and character' shall be liberally construed (including but not limited to any form of motor vehicle for any form of motor vehicle, ... ) (emphasis added). Nothing in the statute requires that the vehicle traded-in be originally purchased in Illinois or that the vehicle traded-in be titled in Illinois at the time of the trade.

Illinois Administrative Code Title 86 Section 130.425 (e) states '[t]he value of tangible personal property taken by a seller in trade as all or a part of the consideration for a sale, where the item that is traded-in is of like kind and character as that which is being sold, shall not be considered to be 'gross receipts' subject to the Retailers' Occupation Tax and need not be included in the seller's return, or may be deducted in the return from gross receipts if included in gross receipts as reported in the return.'

Illinois Administrative Code Title 86 Section 130.455(c) states that:

- 1) 'A dealer may reduce his gross receipts by the value of or credit given for a traded-in motor vehicle where:
  - A) An individual trades a motor vehicle he owns on the purchase of a new or used motor vehicle;
  - B) A lessor trades a motor vehicle he owns on the purchase of a new or used motor vehicle for subsequent lease;
  - C) A lessor or other purchaser trades a motor vehicle owned by a prospective lessee or a third party where the prospective lessee or third party assigns the vehicle to the dealer and provides written authorization for the trade to the dealer, for the benefit of the lessor or other purchaser. The written authorization provided by the prospective lessee or third party should be specific to the immediate transaction, identifying the vehicle to be purchased by the lessor or other purchaser. A prospective lessee or third party trade-in authorization may not be used in conjunction with an advance trade transaction; or
  - D) A motor vehicle is traded-in as described in subsection (c)(1)(B) or (c)(1)(C) of this Section, and the dealer executes the lease but assigns the lease to a purchasing lessor, if the following requirements are part of the transaction:
    - i) the lease agreement states that the lease and vehicle will be assigned to the lessor making the trade of the motor vehicle, and
    - ii) title is issued directly to the lessor making the trade of the motor vehicle and not to the dealer so that the dealer remains outside the chain of title.
- 2) A dealer may not reduce his gross receipts by the value of or credit given for a traded-in motor vehicle where:
  - A) The dealer is the owner (meaning the dealer holds either title or certificate of origin) of the traded-in motor vehicle;
  - B) The trade-in vehicle was disposed of in a sales transaction predating the trade but was not identified by contract or written agreement as an advance trade-in vehicle as required in subsection (d) of this Section; or

- C) The party holding title and offering the vehicle or vehicles for trade on behalf of another purchaser or lessor, as described in subsection (c)(1)(C) of this Section, would not be entitled to the isolated or occasional sale exemption if such vehicle or vehicles were sold by that party, rather than traded.

There are no restrictions or limitations in the regulations that require that the vehicle traded-in be originally purchased in Illinois. Similarly, the law does not state that the trade-in vehicle must be titled in Illinois at the time of the trade.

Illinois Administrative Code Title 86 Section 130.425(d) provides that the person taking the vehicle in trade must be a retailer of motor vehicles and a trade-in credit cannot be given if the retail sale by the person who accepts the vehicle in trade will be exempt as an occasional or isolated sale. These restrictions indicate that the purpose of the trade-in credit is to avoid the imposition of tax twice on the sale of the trade-in vehicle. It is not intended to be a credit for the tax paid on the original purchase of the traded-in vehicle and therefore, even if the vehicle was originally purchased exempt, the trade-in credit would still apply. Thus, our reading of the statute is consistent with the intent of the statute.

Please confirm that (1) the trade-in motor vehicle does not have to be titled in Illinois at the time of the trade-in, i.e., that the trade-in vehicle can be leased in other states and titled in such other states and (2) the trade-in vehicle does not have to have been originally purchased in Illinois and subject to Illinois Retailers Occupation Tax or Use Tax on the original purchase (and therefore the ST-556 or other documentation does not have to be maintained as evidence that the tax was paid on the original purchase of the trade-in vehicle).

We appreciate your assistance. If you have any questions or need additional information, please call me.

## **DEPARTMENT'S RESPONSE:**

Neither 86 Ill. Adm. Code 130.425 nor 130.455 limit that allowance of credit for trade-ins to motor vehicles that are titled in Illinois at the time of the trade-in. Nor do these provisions require that the trade-in vehicle has to have been originally purchased in Illinois and subject to Illinois Retailers' Occupation Tax or Use Tax on the original purchase in order to qualify for the credit. As pointed out in the ruling request, 86 Ill. Adm. Code 130.425(d) states that "[t]he real test is whether the retail sale of the traded-in tangible personal property by the person who accepts it in trade would be subject to Retailers' Occupation Tax, or whether such sale would be exempt as an isolated or occasional sale." If the trade-in would be subject to Retailers' Occupation Tax when re-sold, and it meets all other requirements for the trade-in credit, then the credit is allowed, regardless of where the motor vehicle being traded in is titled or was originally purchased.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Sincerely,

Samuel J. Moore  
Associate Counsel

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